

## § 239.23

### **§ 239.23 Form N-14, for the registration of securities issued in business combination transactions by investment companies and business development companies.**

This form shall be used by a registered investment company or a business development company as defined by section 2(a)(48) of the Investment Company Act of 1940 for registration under the Securities Act of 1933 of securities to be issued:

(a) In a transaction of the type specified in paragraph (a) of Rule 145 (§230.145 of this chapter);

(b) In a merger in which the applicable state law would not require the solicitation of the votes or consents of all the security holders of the company being acquired;

(c) In an exchange offer for securities of the issuer or another entity;

(d) In a public reoffering or resale of any such securities acquired pursuant to this registration statement;

(e) In more than one of the kinds of transactions listed in paragraphs (a) through (d) registered on one registration statement.

[50 FR 48383, Nov. 25, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N-14, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### **§ 239.24 Form N-5, form for registration of small business investment company under the Securities Act of 1933 and the Investment Company Act of 1940.**

This form shall be used for registration under the Securities Act of 1933 of securities issued by any small business investment company which is registered under the Investment Company Act of 1940, and which is licensed under the Small Business Investment Company Act of 1958 or which has received the preliminary approval of the Small Business Administration and has been notified by the Administration that it may submit a license application. This form may also be used for the registration statement of such company pursuant to section 8(b) of the Investment Company Act of 1940. The initial registration of such company on this form will be deemed to be filed under both

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the Securities Act of 1933 and the Investment Company Act of 1940 unless it is indicated that the filing is made only for the purpose of one of such acts. (Same as §274.5 of this chapter.)

EDITORIAL NOTE: For FEDERAL REGISTER citations Form N-5, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### **§ 239.25 Form S-4, for the registration of securities issued in business combination transactions.**

This form may be used for registration under the Securities Act of 1933 of securities to be issued (a) in a transaction of the type specified in paragraph (a) of Rule 145 (§230.145 of this chapter); (b) in a merger in which the applicable state law would not require the solicitation of the votes or consents of all of the security holders of the company being acquired; (c) in an exchange offer for securities of the issuer or another entity; (d) in a public reoffering or resale of any such securities acquired pursuant to this registration statement; or (e) in more than one of the kinds of transactions listed in paragraphs (a) through (d) registered on one registration statement.

[50 FR 19001, May 6, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form S-4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### **§§ 239.26-239.30 [Reserved]**

### **§ 239.31 Form F-1, registration statement under the Securities Act of 1933 for securities of certain foreign private issuers.**

(a) Form F-1 shall be used for registration under the Securities Act of 1933 ("Securities Act") of securities of all foreign private issuers, as defined in rule 405 (§230.405 of this chapter) for which no other form is authorized or prescribed.

(b) If a registrant is a majority-owned subsidiary, which does not itself meet the conditions of these eligibility requirements, it shall nevertheless be deemed to have met such conditions if its parent meets the conditions and if

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the parent fully guarantees the securities being registered as to principal and interest.

[47 FR 54771, Dec. 6, 1982, as amended at 56 FR 30055, 30056, July 1, 1991]

EDITORIAL NOTE: For FEDERAL REGISTER citations Form F-1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### **§ 239.32 Form F-2, for registration under the Securities Act of 1933 for securities of certain foreign private issuers.**

Any foreign private issuer, as defined in Rule 405 (§230.405 of this chapter), which meets the following conditions may use this form for the registration of securities under the Securities Act of 1933 (*Securities Act*) which are offered or to be offered in any transaction other than an exchange offer for securities of another person:

(a) The registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 (the "Exchange Act") or has a class of equity securities registered pursuant to section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act and has filed annual reports on Form 20-F (§249.220f of this chapter), on Form 10-K and Form 10-KSB (§249.310 of this chapter) or, in the case of registrants described in General Instruction A. (2) of Form 40-F, on Form 40-F (§249.240f of this chapter) under the Exchange Act.

(b)(1) The Registrant (i) has been subject to the requirements of section 12 or 15(d) of the Exchange Act and has filed all the information required to be filed pursuant to Section 13, 14 or 15(d) for a period of at least thirty-six calendar months immediately preceding the filing of the registration statement on this form; (ii) has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the issuer has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) Rule 12b-25(b) (§240.12b-25(b) of this chapter) under

the Exchange Act with respect to a report or portion of a report, that report or portion thereof has actually been filed within the time period prescribed by the Rule.

(2) The provisions of paragraph (b)(1)(i) of this section do not apply to any registrant if:

(i) The aggregate market value worldwide of the voting and non-voting common equity of the registrant held by non-affiliates is the equivalent of \$75 million or more, or if non-convertible securities that are "investment grade securities," as defined in Instructions to paragraph (b) of this section, are being registered; and

(ii) The registrant has filed at least one Form 20-F (§249.220f of this chapter), Form 40-F (§249.240f of this chapter) or Form 10-K (§249.310 of this chapter) that is the latest required to have been filed.

*Instructions to paragraph (b):* 1. The aggregate market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock in the principal market for such stock, as of a date within 60 days prior to the date of filing [See the definition of *affiliate* in Securities Act Rule 405 (§230.405 of this chapter)].

2. A non-convertible security is an *investment grade security* if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in §240.15c3-1(c)(2)(vi)(F) of this chapter) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may be sub-categories or gradations indicating relative standing) signify investment grade.

(c) Neither the registrant nor any of its consolidated or unconsolidated subsidiaries have, since the end of their last fiscal year for which certified financial statements of the registrant and its consolidated subsidiaries were included in a report filed pursuant to section 13(a) or 15(d) of the Exchange Act: (1) Failed to pay any dividend or sinking fund installment on preferred stock; or (2) defaulted (A) on any installment or installments on indebtedness for borrowed money, or (B) on any rental on one or more long term leases, which defaults in the aggregate are material to the financial position of the registrant and its consolidated and